# EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



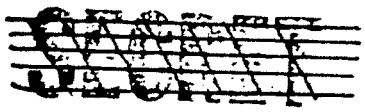
UNITED STATES OF AMERICA )
)
v. ) Criminal No. 86-0207
)
JONATHAN JAY POLLARD )

GOVERNMENT'S REPLY
TO DEFENDANT'S SENTENCING MEMORANDUM

The United States, by and through its attorney, the United States Attorney for the District of Columbia, hereby replies to Defendant JONATHAN J. POLLARD'S First Memorandum in Aid of Sentencing (hereinafter "Defendant's First Memorandum") and Defendant JONATHAN J. POLLARD'S Second Memorandum in Aid of Sentencing (hereinafter "Defendant's Second Memorandum"). In support of its Reply, the government submits the following.

INTRODUCTION

It would not be possible for the government, in the limited time remaining before sentencing, to specifically respond to each contention contained in the voluminous pleadings filed by defendant only five days before the scheduled hearing. Although defendant's First Memorandum was ostensibly prepared in August, 1986, and could have been submitted for classification review at any point thereafter, no explanation has been offered for its belated filing. The government will, however, attempt herein to briefly cite for the



Court's consideration examples of the deceptive statements and distorted analysis which are characteristic of defendant's pleadings, and which evidence defendant's calculated effort to obtain a "political solution" to these criminal proceedings.

1. Calculated Effort to Obtain "Political Solution"

Defendant's pleadings reinforce the tactic which he has relentlessly pursued during recent months -- to garner support for a "political solution" to the criminal proceedings pending before this Court. Defendant continues to express his hope that his incarceration may be cut-short by a "diplomatic or administrative" solution:

> "Although this embarrassing type of discovery [Israeli espionage against the United States] has previously occurred, both parties very often resolved their differences quietly through diplomatic or administrative channels, neither state wishing to precipitate a cause celebre, which might put at risk more substantive aspects of their relationship. It is my belief that if this imbroglio had been managed in such a discrete manner the Israeli government might have been inclined to act responsibly from the start and to quickly admit their culpability." (Defendant's First Memorandum at 29). (Emphasis added).

Indeed, defendant admits that his decision to cooperate with U.S. authorities was prompted by an expectation that diplomatic discussions regarding the resolution of his case would ensue:

> "I had hoped that to the extent the [U.S.] government could be quickly assured that no damage was sustained by the intelligence community's clandestine agents nets and communications security, the faster everyone could relax and proceed with both a more restrained debriefing process and diplomatic demarche with the Israelis. (Id. at 58). (Emphasis added).

Defendant has done more than merely express a hope for a political solution. In recent months he has repeatedly made statements designed to obtain popular support in Israel for such an effort. Beginning with his November 20, 1986 interview with Wolf Blitzer, published the following day in the Jerusalem Post, defendant has solicited political efforts by Israel to obtain his release ("I feel the same way that one of Israel's pilots would feel if after he was shot down, nobody made an effort to get him out . . . By avoiding the issue, Israel is leaving an unburied body to rot and stink and foul the air")(copy attached as Exhibit A to Government's Memorandum in Aid of Sentencing. Similarly in a lengthy letter authored by defendant and published in the Jerusalem Post on January 27, 1987, defendant attempts to glorify his actions ("I am neverthless confident that what I did . . . will make a significant contribution to Israel's military capabilities), complains of the

"painfully slow process of judicial crucifixion" and laments that "[w]e fully expect the worst because no one has summoned the [Jewish] community to put a stop to this ordeal." (copy of January 27, 1987 Jerusalem Post article attached hereto as Exhibit A ).

These public relations efforts recently culminated in yet another newspaper article designed to glorify defendant's actions and minimize the public perception of harm resulting from defendant's espionage activities.

R81

RBI (continued)

RBI (continued)

RBI (Continued)

R81 (continued)

R81 (continued)

RBI (continued)

The Weinberger Declaration was made available to defendant and his counsel immediately upon its filing in camera on January 9, 1987. Defendant was granted access to this classified government pleading pursuant to the Protective Order entered by this Court on October 24, 1986. That Order provides, in pertinent part:

> "The purpose of this Protective Order is to insure that those named herein [including defendant] will never divulge the classified information or documents disclosed to them to anyone who is not authorized to receive, it, and without prior written authorization from the originating agency and in conformity with this Order" (October 24, 1986 Protective Order at p. 12).

On November 12, 1986, defendant expressly acknowledged his obligations under the Protective Order in executing, under oath, the required Memorandum of Understanding (copy attached hereto as Exhibit C). It is clear, however, that defendant is no more willing to honor his sworn representations to this Court than the numerous non-disclosure agreements he executed, and subsequently breached, during his employment with the U.S. Navy (see examples of non-disclosure agreements executed by defendant attached as exhibits to Weinberger Declaration).

R82

This pattern of public relations gambits undertaken by defendant belies the image, which his counsel have sought to present, of a defendant who while frustrated and desperate, respectfully submits himself to the mercy of the Court. Rather, defendant's recent conduct has demonstrated that he is as contemptuous of this Court's authority as the laws and regulations governing the dissemination of U.S. classified information. The period between defendant's guilty plea and sentencing has been a time when he could have demonstrated remorse and a willingness to conform his conduct to the law. Instead, defendant has proven through continued violations of the plea agreement and the Court's Protective Order, that he is a recidivist and unworthy of trust.

2. Deceptive and Misleading Statements

It is, of course, true that the government has confirmed, through use of polygraph examinations, defendant's description of the roles of Israeli co-conspirators in this espionage operation. Defendant has sought to exploit this fact by indiscriminate claims, throughout his pleadings, that the polygraph has confirmed his self-serving version of events. While defendant could have recited the precise polygraph question asked to support his claim, only once does defendant point to a specific polygraph question, which he assertedly answered truthfully. In fact, in the instance cited the polygraph actually exposed defendant's deception.

In defendant's Second Memorandum, he contends that the government's

> ". . . polygrapher specifically interrogated Mr. Pollard on his motivations for providing information to Israel. The polygraph operator found no deception when Mr. Pollard stated that he acted primarily for ideological reasons." (at p. 27)

Defendant was never found to be non-deceptive in his claim that he acted primarily for ideological reasons. In fact, only two polygraph questions were posed to defendant on this subject, and his responses to both questions were determined to be deceptive. In one of the earlier interviews of defendant conducted by the polygrapher, defendant was asked, "Did you provide classified material to the Israelis solely for personal financial gain," and (2) "Have you intentionally lied to me with regard to your true reasons for providing classified material to the Israeli government." When defendant answered these questions "no", his responses were determined by the polygraph to be deceptive.

These specific questions were selected by the polygrapher at the outset of the polygraph examination as "control" questions. Such "control" questions are intended, among other reasons, to obtain a reading on answers which, because of information already related by the subject, are known to be deceptive. Even at this early stage of the polygraph examination, defendant had conceded that money had played an increasingly important role in his espionage activites. Given the strong, deceptive responses to these "control" questions, the polygrapher never posed the question to defendant again. Moreover, defendant never requested that he be

tested on this subject after the "control" question exposed his deception.[1/]

Because the evidence of defendant's financial excesses revealed by the government's investigation is in our view overwhelming, reference in our previously filed sentencing memorandum to defendant's inability to survive polygraph inquiry of his "ideological" defense seemed unnecessary overkill. Inexplicably, defendant responded to the government's restrained approach to this issue by asserting that he truthfully answered a polygraph question about his motives which the record shows he was never asked.

There are several other examples of defendant's dissembling which can be briefly addressed. In defendant's First Memorandum, he now claims that it was Rafi Eitan to whom defendant addressed his offer to repay all the money received from the Israelis and to establish a "chair" at an Israeli intelligence training center. (at 39). This is at least the third version of this story defendant has told. During a debriefing on September 4, 1986 defendant told FBI and NIS agents that he had written a letter to Joseph Yagur offering to repay his espionage proceeds and fund an Israeli, intelligence chair. On October 1, 1986, during a pre-polygraph examination

1/ In subsequent interviews with the polygraph examiner, defendant admitted that his motives in conducting espionage were mixed. He explained that while he commenced his activities for Israel for ideological reasons, he was quickly corrupted by the monies he was paid. Moreover, defendant never informed the polygrapher that he resisted the Israelis payments. Indeed defendant acknowledged that by the summer of 1985 he developed an "addiction" to money. The polygrapher accepted this explanation, as has the government in its Memorandum in Aid of Sentencing. We are prepared to have the Court sentence defendant on this basis.

interview regarding this and other subjects, defendant admitted to FBI polygrapher Barry Colvert that he never had written a letter on this subject to Yagur, but instead asked Irit Erb to inform Yagur of defendant's intent in this regard.[2/] About the only aspect common to each of these three versions is that defendant repaid none of the money received, all of which had been spent by the time of his arrest.

Another example of defendant's false exculpatory explanations is his claim that he never would have received all of the money promised him by the Israelis, in particular the annual $30,000 deposit into a foreign bank account, because he had "already made the decision to terminate his activities at the end of 1985" (defendant's First Memorandum at 41). Defendant also now claims that he never saw any proof the foreign bank account existed, and that "the United States has determined that the account was devoid of funds." (Defendant's Second Memorandum at 29-30).

During all of his prior debriefings and interviews, defendant has never revealed this "decision" to terminate his espionage activities at the end of 1985. Instead defendant has previously informed government investigators that in October, 1986, after he had been promised an additional $30,000 each year for ten years, defendant executed signature cards for the foreign bank account into which the money was to be deposited. The government has

2/ This last version is repeated in defendant's Second Memorandum at 26 n. 5) and is also at odds with the above-mentioned version appearing in defendant's First Memorandum (at 39). Thus defendant has been unable to keep his versions on this subject consistent even as between his two pleadings.

obtained confirmation that the foreign account was in fact established for defendant by Joseph Yagur, and monies deposited therein. Defendant certainly did not refuse the Israeli offer of these additional monies, and has never before claimed any intent to conclude the espionage operation within two months of executing these signature cards.

In any event, if defendant's point is that he expected no further financial gain from Israel after 1985, he contradicts himself in the very next paragraph of his pleading. There defendant acknowledges that whenever he ceased his espionage activities in the U.S., it was understood that he would remain on the Israeli payroll:

> "The understanding was that since I would eventually be employed either in the official or "gray" arms market, this assignment [advising Yagur on arms sales] could be viewed as my initiative, commission and all." (defendant's First Memorandum at 42)

It is therefore obvious defendant well understood that his ability to profit from his clandestine relationship with Israel was not limited to a short-term period of time.

Despite the fact that defendant's veracity regarding his claimed ideological motives has been seriously undermined, he sees fit to challenge the veracity and motives of certain U.S. citizens to whom defendant disclosed classified information, and who have cooperated in the government's investigation. Defendant asserts that these individuals should be disbelieved because the government did not charge them with law violations and did not subject them to a polygraph examination. First, it should be noted that each of these

individuals, unlike defendant, immediately and completely described their receipt of classified information when first contacted by government investigators. Second, after some dissembling responses, defendant eventually confirmed these individuals' descriptions of defendant's unauthorized disclosures. Since defendant now challenges only the characterization of his motives in providing the information, there was and is no need to subject these cooperating individuals to a polygraph. Finally, in criticizing the government's decision not to charge these individuals, defendant has lost sight of the fact that it was he, not the cooperating individuals, who violated a sworn non-disclosure oath in expectation of financial gain.[3/]

2. Distorted Claims Regarding Lack of Harm to U.S. Security

Defendant begins his argument with the groundless suggestion that Secretary Weinberger signed his Declaration in ignorance of its contents (defendant's Second Memorandum at n.1). In fact, the Secretary insisted as early as May 1986, that he be personally

involved in describing for the Court the damage caused by defendant's crimes.[4/] Beyond this frivolous assertion about the Secretary's familiarity with the case, defendant offers no authority to refute the detailed description of damage submitted in this case in camera. Rather, defendant is asking the Court to disregard the U.S. classified information disclosure policies implemented by the President and his predecessors over the last forty years, and to accept those formulated by defendant instead.

We believe it is critical in this regard for the Court to focus upon a statement, which defendant has made in his pleadings, that "I'd be the first one to overstate the degree of danger Israel is currently facing . . ." (Defendant's First Memorandum at 28). This statement is true without a doubt, as is the logical corollary of this statement -- that defendant would be the first one to understate the degree of damage to U.S. security caused by his unlawful activities. It is with reference to these related truisms that we ask the Court to measure defendant's self-serving distortion of the Weinberger Declaration.

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4/ Defendant's counsel join their client in criticizing the Secretary's participation in the sentencing phase of this case by arguing that the damage assessments in another "espionage" case in which they are counsel were not signed by the Secretary of Defense. That case, United States v. Zettl, et. al. does not involve espionage but rather the unauthorized disclosure of classified information, contained primarily in a single document, to U.S. defense contractors. The security clearances counsel had been granted in that case were for a much lower classification level and would have authorized access to only a small portion of the information involved here. The Secratary's participation in this case is therefore clearly appropriate; defendant's counsels' continued efforts to divert attention to other cases is not.

First defendant faults the Weinberger Declaration for its assessment of damage, both actual and potential. As to the latter aspect of the damage analysis, defendant argues that the Court should disregard the reasoned concerns of a U.S. Cabinet member as to the real potential for further injury resulting from defendant's crimes. In short, defendant says that if the government cannot state with certainty that all the damage which could reasonably occur in fact has occurred before sentencing, an espionage defendant should not be held accountable for potential harm which he alone has wrought.

In support of this argument, defendant erroneously observes that the government has had fifteen months to conduct a damage assessment. Defendant did not reveal the specific documents which he had compromised until after his plea in June, 1986. By September, 1986, defendant had identified thousands of U.S. classified documents and messages which he had sold to Israel, and acknowledged that there were many more which he could not specifically recall. The process of making even a preliminary assessment of the resultant damage could not possibly be done in the following few months, and in fact will take years to complete.

Although the government selected twenty representative documents for analysis in the Weinberger Declaration, defendant does not even address the specific, reasoned projections of damage resulting from the compromise of these documents which the Weinberger Declaration contains. Instead, defendant resorts to arguing that

these potential risks -- such as the use of U.S. classified information by Israel against third countries, the provision by Israel of U.S. classifed Information to third countries adverse to the U.S., or the further compromise of U.S. classified information to hostile countries -- would not likely occur since Israel is a close and careful ally.

RBS

In defendant's myopic view, notwithstanding this forty-year old policy, he remains best equipped to determine what Israel needs and is capable of protecting. Three representations in his pleadings point up the folly of this position. First, defendant says the U.S. policy of sharing some information with Israel demonstrates our willingness to "assume the risk" of a hostile country infiltrating

the Israeli intelligence community (defendant's Second Memorandum at 11). The obvious fact is that although the U.S. may be prepared to assume the risk that the less sensitive information we authorize for disclosure to Israel might be compromised, the U.S. is unwilling to put at risk the more highly classified information which defendant stole in contravention of U.S. disclosure policies.[5/] Second, defendant describes Secretary Weinberger's determination of Israel's military and intelligence needs as "facile" (Id. at 12). However, it was defendant's uninformed assessment of Israel's needs which was easily made since he was not burdened by considerations of countervailing benefits to the United States. In contrast, the assessments of Israel's needs made by Secretary Weinberger and all of his predecessors have included an analysis of whether those needs were consistent with U.S. national security.

Finally, defendant states that it is inconsistent for the Secretary of Defense to describe the damage caused by Israeli espionage against the U.S.,

R86

This argument demonstrates, above all others, defendant's complete loss of any perspective consistent with our national security. It is a sign of defendant's desperation that he seeks to

5/ Defendant also attempts to excuse his conduct by claiming that the U.S. was withholding classified information which should have been disclosed.

R87

Defendant acknowledges that he is familiar with those exchange agreements, and he along with his counsel have been given the opportunity to review the entire list of documents compromised by defendant. Yet he has not identified a single document, of the thousands compromised, that was improperly withheld by the U.S.

excuse his traitorous conduct by noting the U.S. "spys" too. While the distinction may have been lost on defendant, we are confident that it remains clear to virtually any other citizen of the United States.

3. Distortion Regarding Extent and Value of Cooperation

Defendant challenges the description of his cooperation, provided in the Government's Classified Sentencing Memorandum, and sets forth nineteen (19) areas of cooperation which, he states, should be "weighed heavily" by the Court (defendant's Second Memorandum at pp. 37-40). As explained briefly hereinbelow, the extent and value of this cooperation is grossly exaggerated by defendant.

As the government has previously acknowledged, defendant has provided information, about which he has personal knowledge, regarding the activities of his co-conspirators and the methods, as well as the facilities, used by them to receive the classified information compromised by defendant. This cooperation is required by the plea agreement and, in our view, is the very least to be expected of a defendant pending sentencing on an espionage charge. (See, defendant's Second Memorandum at 37-38, ¶¶ 1,2,8,9,10,11,16). However, defendant's description of this aspect of his cooperation has been embellished. For example, defendant describes his revelation to U.S. investigators that he briefly observed a large xerox machine and camera at the Irit Erb's apartment building as "document duplication technology [and] electronic emissions control methods". Defendant also describes the instructions he received from his

"handlers" about where to travel for meetings as "detailed insight into Israeli clandestine modus operandi, which included . . . international travel arrangements and command/control networks." (Id. at 37). This hyperbole should not be mistaken for cooperation of value.

The information defendant says he provided about high-level Israeli government policies and activities (Defendant's Second Memorandum at 38-39, ¶¶ 4,5,12,13,14,18) and Israeli intelligence activities not specifically related to defendant's espionage activities (Id. at ¶¶ 3,6,15,19) was in fact based upon second or third hand information obtained from defendant's handlers, and has not, indeed cannot be verified.[6/] Significantly, while defendant's description of his cooperation implies to the contrary, defendant has not provided U.S. investigators with verifiable information about other specific Israeli espionage activities in the U.S.

Finally, defendant expounds upon the "briefings" he was asked to give "intelligence officers" on various subjects including some "beyond the realm of his activities for Israel" (Defendant's Second Memorandum at 41). The fact that FBI and Naval Investigative Service (NIS) agents listened politely while defendant deviated from the subject of his espionage activities, and the agents then closed the interview with a courteous "thank you", has been misinterpreted by defendant as an acknowledgement that defendant's excursions into unrelated areas were "of value". In its Classified Sentencing

Memorandum the government has described the information imparted to U.S. investigators by defendant, pursuant to his agreement to cooperate, which has been of value to this investigation. We believe that description is the only fair and accurate one which has been presented to the Court.

Conclusion

The expressions of remorse contained in defendant's pleadings are both belated and hollow. We suggest that the Court is now told defendant is remorseful only because the government has previously informed the Court of defendant's February, 1986 statement to the FBI that he would commit espionage for Israel again if given the chance. In fact, defendant began the process of trying to distance himself from this candid admission when in July, 1986 he heard another inmate at Petersburg FCI make a similar statement about that inmate's offense, and realized how damaging such a remark could be at sentencing.

Moreover, all of defendant's statements of remorse are grounded in the fact he was caught, and not in recognition of the wrongfulness of his actions. Defendant complains primarily of the restrictions placed upon his freedom by incarceration. He disdainfully describes the "thieves, murderers, kidnappers, child molestors, extortionists, pimps and drug-pushers," with whom defendant has been incarcerated and professes amazement that these individuals view defendant as "potentially dangerous" (defendant's First Memorandum at 54).[7/] That

7/ While the deprivations suffered by any defendant in jail are harsh, defendant has chosen to make this point, both during press interviews and in his pleadings, through denigrating descriptions of the fellow human beings with whom he has been incarcerated. This attitude, we submit, is another example of the arrogance which characterizes the conduct and judgment of this defendant.

defendant's fellow inmates consider him to be dangerous may be surprising to defendant, but it is a view which is entirely consistent with the self-evident proposition that espionage is one of the most heinous of crimes. This view was adopted by the sentencing judge in a case cited by defendant, United States v. Morison, where a three year sentence was imposed for the publication of a single classified photograph. Defendant refers the Court to that case for the proposition that "the volume of the compromised information meant nothing" (defendant's Second Memorandum at 5). However, a more accurate analysis of the Morison sentencing rationale is that three years is the appropriate penalty for an isolated incident of unauthorized disclosure of classified information to a publisher or newspaper.

In the present case, defendant has engaged in a pattern of espionage for pay, and his unauthorized disclosure of classified information has continued even after his arrest and incarceration. The evidence has revealed defendant's perception and belief that he need not conform his conduct to long-established U.S. classified information disclosure policies, sworn non-disclosure agreements, U.S. espionage laws, plea agreements, or orders of this Court.

Accordingly, we ask the Court to impose a sentence which reflects both the damage already inflicted by defendant upon the national security, as well as the continuing risk of disclosure posed by this defendant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Government's Reply to Defendant's Sentencing Memorandum has been by hand to counsel for defendant, Richard A. Hibey, Esquire and James P. Hibey, Esquire at the Department of Justice Security Center this 3rd day of March, 1987.

CHARLES S. LEEPER
Assistant United States Attorney